

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL

No. 1407

Introduced by Senator Leno

February 24, 2012

~~An act to amend Section 10601.2 of the Welfare and Institutions Code, relating to public social services. An act to amend Section 56.11 of the Civil Code, to amend Section 123105 of the Health and Safety Code, and to amend Sections 280 and 281 of the Welfare and Institutions Code, relating to medical information.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1407, as amended, Leno. ~~Child welfare: child and family service reviews. Medical information: disclosure.~~

(1) Existing law governs the release of a patient's medical records and medical information by a health care provider, health care service plan, pharmaceutical company, or provider. Under existing law, a patient may inspect his or her medical records if the patient or his or her representative, as defined, presents a written request to the health care provider. Existing law also authorizes a health care provider, health care service plan, pharmaceutical company, or contractor to release a patient's medical information after receiving a valid signed authorization from the patient, the patient's legal representative, as defined, if the patient is a minor or incompetent, and other specified individuals. Existing law provides that a minor may be removed from the physical custody of his or her parents in dependency proceedings if there is a substantial danger to the physical health of the child or the child is suffering severe emotional damage and there are no reasonable means to protect the child without removing him or her.

This bill would provide that a minor patient's parent shall not be considered the minor's representative for medical information release purposes if the minor has been removed from that parent's physical custody in dependency proceedings.

(2) Existing law requires a juvenile probation officer in a dependency or delinquency proceeding to prepare a social study, which includes a recommendation for disposition of that case, for disposition hearings. Under existing law, the juvenile court may also order the probation officer to file other written reports and recommendations concerning a minor's custody, status, or welfare. Existing law permits disclosure of medical information to a county social worker, probation officer, or any other person who is legally authorized to have custody or care of a minor for the purpose of coordinating the minor's health care services and medical treatment, including mental health and developmental disability services.

This bill would expand the requirement that a juvenile probation officer prepare a social study to include any disposition hearing in a case involving a nonminor dependent of the court. The bill would also prohibit the probation officer from including any privileged information in the report, including information relating to the minor's health care and mental health treatment, unless the holder of the privilege validly waives that privilege. By increasing the duties of local probation officers to include social studies for cases involving nonminor dependents, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Under existing law, the state, through the State Department of Social Services and county welfare departments, is required to establish and support a public system of statewide child welfare services for the protection of children. Existing law also requires the department to establish the California Child and Family Service Review System to review all county child welfare systems.~~

~~This bill would make a nonsubstantive, technical change to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 56.11 of the Civil Code is amended to*
2 *read:*

3 56.11. Any person or entity that wishes to obtain medical
4 information pursuant to subdivision (a) of Section 56.10, other
5 than a person or entity authorized to receive medical information
6 pursuant to subdivision (b) or (c) of Section 56.10, except as
7 provided in paragraph (21) of subdivision (c) of Section 56.10,
8 shall obtain a valid authorization for the release of this information.

9 An authorization for the release of medical information by a
10 provider of health care, health care service plan, pharmaceutical
11 company, or contractor shall be valid if it:

12 (a) Is handwritten by the person who signs it or is in a typeface
13 no smaller than 14-point type.

14 (b) Is clearly separate from any other language present on the
15 same page and is executed by a signature which serves no other
16 purpose than to execute the authorization.

17 (c) Is signed and dated by one of the following:

18 (1) The patient. A patient who is a minor may only sign an
19 authorization for the release of medical information obtained by
20 a provider of health care, health care service plan, pharmaceutical
21 company, or contractor in the course of furnishing services to
22 which the minor could lawfully have consented under Part 1
23 (commencing with Section 25) or Part 2.7 (commencing with
24 Section 60).

25 (2) The legal representative of the patient, if the patient is a
26 minor or an incompetent. However, authorization may not be given
27 under this subdivision for the disclosure of medical information
28 obtained by the provider of health care, health care service plan,
29 pharmaceutical company, or contractor in the course of furnishing
30 services to which a minor patient could lawfully have consented
31 under Part 1 (commencing with Section 25) or Part 2.7
32 (commencing with Section 60). *A parent or guardian is not*
33 *considered the legal representative of a minor patient for purposes*
34 *of this paragraph if the minor has been removed from the physical*

1 *custody of the parent or guardian pursuant to Section 300 of the*
2 *Welfare and Institutions Code.*

3 (3) The spouse of the patient or the person financially
4 responsible for the patient, where the medical information is being
5 sought for the sole purpose of processing an application for health
6 insurance or for enrollment in a nonprofit hospital plan, a health
7 care service plan, or an employee benefit plan, and where the
8 patient is to be an enrolled spouse or dependent under the policy
9 or plan.

10 (4) The beneficiary or personal representative of a deceased
11 patient.

12 (d) States the specific uses and limitations on the types of
13 medical information to be disclosed.

14 (e) States the name or functions of the provider of health care,
15 health care service plan, pharmaceutical company, or contractor
16 that may disclose the medical information.

17 (f) States the name or functions of the persons or entities
18 authorized to receive the medical information.

19 (g) States the specific uses and limitations on the use of the
20 medical information by the persons or entities authorized to receive
21 the medical information.

22 (h) States a specific date after which the provider of health care,
23 health care service plan, pharmaceutical company, or contractor
24 is no longer authorized to disclose the medical information.

25 (i) Advises the person signing the authorization of the right to
26 receive a copy of the authorization.

27 *SEC. 2. Section 123105 of the Health and Safety Code is*
28 *amended to read:*

29 123105. As used in this chapter:

30 (a) “Health care provider” means any of the following:

31 (1) A health facility licensed pursuant to Chapter 2 (commencing
32 with Section 1250) of Division 2.

33 (2) A clinic licensed pursuant to Chapter 1 (commencing with
34 Section 1200) of Division 2.

35 (3) A home health agency licensed pursuant to Chapter 8
36 (commencing with Section 1725) of Division 2.

37 (4) A physician and surgeon licensed pursuant to Chapter 5
38 (commencing with Section 2000) of Division 2 of the Business
39 and Professions Code or pursuant to the Osteopathic Act.

1 (5) A podiatrist licensed pursuant to Article 22 (commencing
2 with Section 2460) of Chapter 5 of Division 2 of the Business and
3 Professions Code.

4 (6) A dentist licensed pursuant to Chapter 4 (commencing with
5 Section 1600) of Division 2 of the Business and Professions Code.

6 (7) A psychologist licensed pursuant to Chapter 6.6
7 (commencing with Section 2900) of Division 2 of the Business
8 and Professions Code.

9 (8) An optometrist licensed pursuant to Chapter 7 (commencing
10 with Section 3000) of Division 2 of the Business and Professions
11 Code.

12 (9) A chiropractor licensed pursuant to the Chiropractic Initiative
13 Act.

14 (10) A marriage and family therapist licensed pursuant to
15 Chapter 13 (commencing with Section 4980) of Division 2 of the
16 Business and Professions Code.

17 (11) A clinical social worker licensed pursuant to Chapter 14
18 (commencing with Section 4990) of Division 2 of the Business
19 and Professions Code.

20 (12) A physical therapist licensed pursuant to Chapter 5.7
21 (commencing with Section 2600) of Division 2 of the Business
22 and Professions Code.

23 (13) An occupational therapist licensed pursuant to Chapter 5.6
24 (commencing with Section 2570).

25 (14) A professional clinical counselor licensed pursuant to
26 Chapter 16 (commencing with Section 4999.10) of Division 2 of
27 the Business and Professions Code.

28 (b) “Mental health records” means patient records, or discrete
29 portions thereof, specifically relating to evaluation or treatment of
30 a mental disorder. “Mental health records” includes, but is not
31 limited to, all alcohol and drug abuse records.

32 (c) “Patient” means a patient or former patient of a health care
33 provider.

34 (d) “Patient records” means records in any form or medium
35 maintained by, or in the custody or control of, a health care
36 provider relating to the health history, diagnosis, or condition of
37 a patient, or relating to treatment provided or proposed to be
38 provided to the patient. “Patient records” includes only records
39 pertaining to the patient requesting the records or whose
40 representative requests the records. “Patient records” does not

1 include information given in confidence to a health care provider
2 by a person other than another health care provider or the patient,
3 and that material may be removed from any records prior to
4 inspection or copying under Section 123110 or 123115. “Patient
5 records” does not include information contained in aggregate form,
6 such as indices, registers, or logs.

7 (e) “Patient’s representative” or “representative” means any of
8 the following:

9 (1) A parent or guardian of a minor who is a patient, *unless the*
10 *minor patient has been removed from the physical custody of the*
11 *parent or guardian pursuant to Section 300 of the Welfare and*
12 *Institutions Code.*

13 (2) The guardian or conservator of the person of an adult patient.

14 (3) An agent as defined in Section 4607 of the Probate Code,
15 to the extent necessary for the agent to fulfill his or her duties as
16 set forth in Division 4.7 (commencing with Section 4600) of the
17 Probate Code.

18 (4) The beneficiary as defined in Section 24 of the Probate Code
19 or personal representative as defined in Section 58 of the Probate
20 Code, of a deceased patient.

21 (f) “Alcohol and drug abuse records” means patient records, or
22 discrete portions thereof, specifically relating to evaluation and
23 treatment of alcoholism or drug abuse.

24 SEC. 3. *Section 280 of the Welfare and Institutions Code is*
25 *amended to read:*

26 280. (a) Except where waived by the probation officer, judge,
27 or referee and the minor, the probation officer shall be present in
28 court to represent the interests of each person who is the subject
29 of a petition to declare that person to be a ward or dependent child
30 upon all hearings or rehearings of his or her case, and shall furnish
31 to the court such information and assistance as the court may
32 require. If so ordered, the probation officer shall take charge of
33 that person before and after any hearing or rehearing.

34 ~~It~~

35 (b) It shall be the duty of the probation officer to prepare for
36 every hearing on the disposition of a case *a social study of the*
37 *minor, containing any matters that may be relevant to a proper*
38 *disposition of the case*, as provided by Section 356, 358, 358.1,
39 361.5, 364, 366, 366.2, ~~or~~ 366.21, 366.22, 366.25, 366.26, 366.3,
40 391, 702, *or any other hearing for a dependent minor or nonminor*

1 *dependent if a social study is required by law, as is appropriate*
 2 *for the specific hearing, or, for a hearing as provided by Section*
 3 *702, a social study of the minor, containing such matters as may*
 4 *be relevant to a proper disposition of the case. The social study*
 5 *shall include a recommendation for the disposition of the case, but*
 6 *shall not contain any information that is privileged pursuant to*
 7 *Division 8 (commencing with Section 900) of the Evidence Code,*
 8 *including, but not limited to, privileged information that is already*
 9 *contained in the probation or child welfare file, or information*
 10 *obtained pursuant to Section 56.103 of the Civil Code or Section*
 11 *5328.04, unless there is a valid waiver by the holder of the*
 12 *privilege.*

13 *SEC. 4. Section 281 of the Welfare and Institutions Code is*
 14 *amended to read:*

15 281. (a) The probation officer shall, upon order of any court
 16 in any matter involving the custody, status, or welfare of a minor
 17 or minors, make an investigation of appropriate facts and
 18 circumstances and prepare and file with the court written reports
 19 and written recommendations in reference to ~~such~~ *those* matters.
 20 The court is authorized to receive and consider the reports and
 21 recommendations of the probation officer in determining any ~~such~~
 22 ~~matter.~~ *of those matters.*

23 (b) A written report under this section shall not include any
 24 information that is privileged pursuant to Division 8 (commencing
 25 with Section 900) of the Evidence Code, including, but not limited
 26 to, privileged information already contained in the probation or
 27 child welfare file, or information obtained pursuant to Section
 28 56.103 of the Civil Code or Section 5328.04, unless there is a valid
 29 waiver by the holder of the privilege.

30 SEC. 5. *If the Commission on State Mandates determines that*
 31 *this act contains costs mandated by the state, reimbursement to*
 32 *local agencies and school districts for those costs shall be made*
 33 *pursuant to Part 7 (commencing with Section 17500) of Division*
 34 *4 of Title 2 of the Government Code.*

35 SECTION 1. ~~Section 10601.2 of the Welfare and Institutions~~
 36 ~~Code is amended to read:~~

37 ~~10601.2. (a) The State Department of Social Services shall~~
 38 ~~establish, by April 1, 2003, the California Child and Family Service~~
 39 ~~Review System, to review all county child welfare systems. These~~

1 reviews shall cover child protective services, foster care, adoption,
2 family preservation, family support, and independent living.

3 ~~(b) Child and family service reviews shall maximize compliance~~
4 ~~with the federal regulations for the receipt of money from Subtitle~~
5 ~~E (commencing with Section 470) of Title IV of the federal Social~~
6 ~~Security Act (42 U.S.C. Sec. 670 and following) and ensure~~
7 ~~compliance with state plan requirements set forth in Subtitle B~~
8 ~~(commencing with Section 421) of Title IV of the federal Social~~
9 ~~Security Act (42 U.S.C. Sec. 621 and following).~~

10 ~~(c) (1) By October 1, 2002, the California Health and Human~~
11 ~~Services Agency shall convene a workgroup comprised of~~
12 ~~representatives of the Judicial Council, the State Department of~~
13 ~~Social Services, the State Department of Health Care Services, the~~
14 ~~State Department of Mental Health, the State Department of~~
15 ~~Education, the Department of Child Support Services, the State~~
16 ~~Department of Justice, any other state departments or agencies the~~
17 ~~California Health and Human Services Agency deems necessary,~~
18 ~~the County Welfare Directors Association, the California State~~
19 ~~Association of Counties, the Chief Probation Officers of California,~~
20 ~~the California Youth Connection, and representatives of California~~
21 ~~tribes, interested child advocacy organizations, researchers, and~~
22 ~~foster parent organizations. The workgroup shall establish a~~
23 ~~workplan by which child and family service reviews shall be~~
24 ~~conducted pursuant to this section, including a process for~~
25 ~~qualitative peer reviews of case information.~~

26 ~~(2) At a minimum, in establishing the workplan, the workgroup~~
27 ~~shall consider any existing federal program improvement plans~~
28 ~~entered into by the state pursuant to federal regulations, the~~
29 ~~outcome indicators to be measured, compliance thresholds for each~~
30 ~~indicator, timelines for implementation, county review cycles,~~
31 ~~uniform processes, procedures and review instruments to be used,~~
32 ~~a corrective action process, and any funding or staffing increases~~
33 ~~needed to implement the requirements of this section. The agency~~
34 ~~shall broadly consider collaboration with all entities to allow the~~
35 ~~adequate exchange of information and coordination of efforts to~~
36 ~~improve outcomes for foster youth and families.~~

37 ~~(d) (1) The California Child and Family Service Review System~~
38 ~~outcome indicators shall be consistent with the federal child and~~
39 ~~family service review measures and standards for child and family~~
40 ~~outcomes and system factors authorized by Subtitle B (commencing~~

1 with Section 421) and Subtitle E (commencing with Section 470)
2 of Title IV of the federal Social Security Act and the regulations
3 adopted pursuant to those provisions (Parts 1355 to 1357, inclusive,
4 of Title 45 of the Code of Federal Regulations).

5 (2) During the first review cycle pursuant to this section, each
6 county shall be reviewed according to the outcome indicators
7 established for the California Child and Family Service Review
8 System.

9 (3) For subsequent reviews, the workgroup shall consider
10 whether to establish additional outcome indicators that support the
11 federal outcomes and any program improvement plan, and promote
12 good health, mental health, behavioral, educational, and other
13 relevant outcomes for children and families in California's child
14 welfare services system.

15 (e) The State Department of Social Services shall identify and
16 promote the replication of best practices in child welfare service
17 delivery to achieve the measurable outcomes established pursuant
18 to subdivision (d).

19 (f) The State Department of Social Services shall provide
20 information to the Assembly and Senate Budget Committees and
21 appropriate legislative policy committees annually, beginning with
22 the 2002-03 fiscal year, on all of the following:

23 (1) The department's progress in planning for the federal child
24 and family service review to be conducted by the United States
25 Department of Health and Human Services and, upon completion
26 of the federal review, the findings of that review, the state's
27 response to the findings, and the details of any program
28 improvement plan entered into by the state.

29 (2) The department's progress in implementing the California
30 child and family service reviews, including, but not limited to, the
31 timelines for implementation, the process to be used, and any
32 funding or staffing increases needed at the state or local level to
33 implement the requirements of this section.

34 (3) The findings and recommendations for child welfare system
35 improvements identified in county self-assessments and county
36 system improvement plans, including information on common
37 statutory, regulatory, or fiscal barriers identified as inhibiting
38 system improvements, any recommendations to overcome those
39 barriers, and, as applicable, information regarding the allocation

1 and use of the moneys provided to counties pursuant to subdivision
2 (i):

3 ~~(g) Effective April 1, 2003, the existing county compliance~~
4 ~~review system shall be suspended to provide to the State~~
5 ~~Department of Social Services sufficient lead time to provide~~
6 ~~training and technical assistance to counties for the preparation~~
7 ~~necessary to transition to the new child and family service review~~
8 ~~system.~~

9 ~~(h) Beginning January 1, 2004, the department shall commence~~
10 ~~individual child and family service reviews of California counties.~~
11 ~~County child welfare systems that do not meet the established~~
12 ~~compliance thresholds for the outcome measures that are reviewed~~
13 ~~shall receive technical assistance from teams made up of state and~~
14 ~~peer-county administrators to assist with implementing best~~
15 ~~practices to improve their performance and make progress toward~~
16 ~~meeting established levels of compliance.~~

17 ~~(i) (1) To the extent that funds are appropriated in the annual~~
18 ~~Budget Act to enable counties to implement approaches to improve~~
19 ~~their performance on the outcome indicators under this section,~~
20 ~~the department, in consultation with counties, shall establish a~~
21 ~~process for allocating the funds to counties.~~

22 ~~(2) The allocation process shall take into account, at a minimum,~~
23 ~~the extent to which the proposed funding would be used for~~
24 ~~activities that are reasonably expected to help the county make~~
25 ~~progress toward the outcome indicators established pursuant to~~
26 ~~this section, and the extent to which county funding for the Child~~
27 ~~Abuse, Prevention and Treatment program is aligned with the~~
28 ~~outcome indicators.~~

29 ~~(3) To the extent possible, a county shall use funds allocated~~
30 ~~pursuant to this subdivision in a manner that enables the county~~
31 ~~to access additional federal, state, and local funds from other~~
32 ~~available sources. However, a county's ability to receive additional~~
33 ~~matching funds from these sources shall not be a determining factor~~
34 ~~in the allocation process established pursuant to this subdivision.~~

35 ~~(4) The department shall provide information to the appropriate~~
36 ~~committees of the Legislature on the process established pursuant~~
37 ~~to this subdivision for allocating funds to counties.~~